IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	)	
	)	
LARRY A. DEBOER and	)	**Case No. 98-20783**
HELEN L. DEBOER,	)	
fdba The Dutchman Woodworking,	)	
	)	
Debtors.	)	**MEMORANDUM OF**
DECISION	)	**AND ORDER**
	)	
_____	)	

HONORABLE TERRY L. MYERS, U.S. BANKRUPTCY JUDGE

Louis Garbrecht, Coeur d'Alene, Idaho, for Debtors.

Ford Elsaesser, Sandpoint, Idaho, Chapter 7 Trustee.

This case comes before the Court upon the objection of the Trustee to a claim of exemption by the Debtors. This seemingly straight-forward matter raises a number of issues regarding not only interpretation of the relevant statutes, but also application of, and respect for, this Court's prior decisions.

BACKGROUND

Larry and Helen DeBoer filed a voluntary chapter 7[1] petition for relief

[1] Unless otherwise indicated, all references to "code," "title," "chapter" and (continued...)

on August 27, 1998. Their Statement of Affairs reflected only that annual income in certain amounts had been derived from "employment" without identification of the source(s) of income. Schedule I indicates that Mr. DeBoer has been a Clerk with the United States Post Office for seven years; it discloses no other job or trade for him. It indicates that Mrs. DeBoer is "unemployed."

However, the caption of this case indicates that the Debtors formerly did business as "The Dutchman Woodworking."[2] The Debtors' Schedule B disclosed as an asset "accounts receivable" of "The Dutchman Woodworking" in the amount of $1,000.00. The Debtors later filed an "affidavit" in which they assert that the receivable resulted from the sale of furniture made by the Debtors. The Debtors' Schedule C claimed 75% of this account receivable as exempt pursuant to Idaho Code §§ 11-206 and 11-207. The Debtors assert that prior decisions of this Court, particularly *In re Grewal*, 96.4 I.B.C.R. 146 (Bankr.D.Idaho 1996), validate such an exemption.

The Trustee timely objected to the claim of exemption. Rule 4003(b). The Trustee's written objection asserts only that "accounts receivable" do not fall within the available Idaho exemptions. The Trustee at hearing asked the Court to reconsider *Grewal* in light of *In re FitzSimmons*, 725 F.2d 1208 (9th Cir. 1984). The Trustee presented no evidence at hearing, and has filed no briefing.

APPLICABLE LAW

Section 522(b) allows the debtor to exempt property of the estate from administration by the trustee. Idaho has opted out of the federal exemption scheme of § 522. Idaho Code § 11-609. Idaho law therefore controls the validity of the claimed exemption, though this Court interprets and applies the law in bankruptcy proceedings. *In re Collins*, 97.3 I.B.C.R. 78 (Bankr.D.Idaho 1997). A claim of exemption will be valid unless a party in interest or the trustee objects and that objector satisfies its burden of proving that the

---

[1](...continued)
"section" are to the Bankruptcy Code, 11 U.S.C. §§ 101 - 1330, and all references to "rule" are to the Federal Rules of Bankruptcy Procedure 1001 - 9036.

[2] Rule 1005 requires disclosure of all names used by a debtor for the six years preceding filing.

exemption is improperly claimed. Rule 4003(c). Exemptions are to be liberally construed in order to protect the Debtor and his fresh start. Still, the statutory language can't be "tortured" in the guise of liberal construction. *Collins*, 97.3 I.B.C.R. at 79.

The asserted authority for the exemption here is found in the garnishment provisions of the Idaho Code.[3] Section 11-207 states:

> **Restriction on garnishment -- Maximum. --** (1) Except as provided in subsection (2) of this section, the maximum amount of the aggregate disposable earnings of an individual for any work week which is subjected to garnishment shall not exceed (a) twenty-five per cent (25%) of his disposable earnings for that week, or (b) the amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C.A. 206(a)(1) in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Idaho commissioner of labor shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in (b) of this subsection.

Statutory definitions, including that for "earnings," are as follows:

> **Definitions. --** For the purpose of section 11-207, Idaho Code, the term:
>
> 1. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

---

[3] While these sections are within that portion of the Idaho Code addressing exemptions from garnishment rather than exemptions from execution, they were found applicable by the Court in *Grewal*. *See also In re Sanders*, 91 I.B.C.R. 205 (Bankr.D.Idaho 1991). The impact of the garnishment exemption is limited; it only protects a percentage of the earnings owed the debtor and unpaid as of the date of filing the petition for relief. Subsequent earnings of an individual are not property of the estate. § 541(a)(6); *FitzSimmons*, 725 F.2d at 1210-11.

> 2. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.
>
> 3. "Garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

Idaho Code § 11-206. There are no Idaho appellate cases to guide the Court in interpreting the statutes' application to compensation denominated as "accounts receivable." However, this Court addressed the matter in *Grewal*. The first issue presented is whether that decision should be reconsidered.

DISCUSSION

This Judge is regularly asked by litigants to consider anew matters already addressed by other judges of this Court in published (and on occasion unpublished) decisions or, conversely, is told that he is "bound" by such prior decisions. Such assertions are often more reflexive than considered, and made without much discussion or apparent evaluation of the principles of stare decisis involved. The Court therefore believes it would be helpful to review those principles.

A. Binding and Non-binding Authority

Stare decisis is the doctrine by which courts adhere to previous decisions and refrain from disturbing settled issues.

> Generally, the doctrine of stare decisis provides that "when the court has once laid down a principle of law as applicable to a given state of facts, it will adhere to that principle and apply it in future cases where the facts are substantially the same." Russell Moore, Stare Decisis 4 (1958). The stare decisis principle has long been "a cornerstone of the common law," Jeffrey Brookner, Bankruptcy Courts and Stare Decisis: The Need for Restructuring, 27 U.Mich.J.L.Ref. 313, 313 (1993), and continues to thrive.

In re Ball, 185 B.R. 595, 597 (9th Cir. BAP 1995).

Stare decisis encompasses both the concept of binding or controlling precedent, and the policy of consistency of decision even where not bound.

> There is an important difference between cases in which precedent is binding or compulsory and cases in which precedent may be overruled or avoided, even though the court with power to overrule or sidestep precedent may be reluctant to exercise that power given the strong reasons of principle and policy that support the doctrine of stare decisis.
>
> The doctrine of stare decisis is supported by principles that are central to American jurisprudence. Thus, stare decisis prevents the courts from deciding cases in an arbitrary way. It reflects the central idea that like cases should be treated alike. One recent district court decision explained that the doctrine of stare decisis "is derived from considerations of stability and equal treatment." Among the many reasons for adhering to stare decisis, the Supreme Court has emphasized that "[s]tare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."

18 Moore's Federal Practice § 134.01[1] (3d ed. 1999) (citing *Payne v. Tennessee*, 501 U.S. 808, 827 (1991); other footnotes omitted). Certain decisions are clearly binding on this Court, for example, decisions of the Supreme Court or the Ninth Circuit Court of Appeals.[4] Moore's § 134.02[1][a], 134.02[2]. The broom of stare decisis, however, also sweeps in non-binding precedent.

> In the United States, the doctrine of stare decisis has different implications depending on the relationship between the court

---

[4] Much as been written as to whether the decisions of the Bankruptcy Appellate Panel are similarly binding on bankruptcy (or district) courts. *See, e.g., Bank of Maui v. Estate Analysis, Inc.*, 904 F.2d 470 (9th Cir. 1990); *In re Proudfoot*, 144 B.R. 876, 878-79 (9th Cir. BAP 1992); *In re Barakat*, 173 B.R. 672 (Bankr. C.D. Cal. 1994), *aff'd*, 99 F.3d 1520 (9th Cir. 1996). *See also,* Moore's Federal Practice at §134.02[3].

> rendering the judgment and the court that is asked to give the prior judgment precedential effect. When the prior court is the same as the subsequent court, the general rule is that precedent is not binding, even though a court may give great weight to its own prior decisions. If the prior court is at the same level as the subsequent court but the two courts are coordinate rather than identical, as in the case of two district courts in the federal system, then stare decisis is not binding on the subsequent court.

Moore's at § 134.02[1][a]. [5]

In the bankruptcy context, several cases have expressly held, consistent with the foregoing treatise, that the decisions of a single bankruptcy judge are not binding on other bankruptcy judges of that same court. *See, e.g., In re Jamesway Corp.*, 1999 WL 430323 at *3, n.1 (Bankr.S.D.N.Y. 1999); *In re 400 Madison Avenue Ltd. Partnership*, 213 B.R. 888, 890, n.2 (Bankr.S.D.N.Y. 1997); *In re Suburban Motor Freight*, 134 B.R. 617, 626 (Bankr.S.D.Ohio 1991), *aff'd*, 998 F.2d 338 (6th Cir. 1993); *In re Gaylor*, 123 B.R. 236, 240-42 (Bankr.E.D.Mich. 1991).[6]

In short, then, the principle of stare decisis does not bind this Court to inexorably follow its prior decisions, or those of other bankruptcy judges (past or present) of this Court. But while not bound,

---

[5] But Moore's notes that even where not binding, "it is wise judicial policy to adhere to rules announced in earlier cases." *Id.* "The labor of judges would be increased to almost the breaking point if every past decision could be reopened in every case, and one could not lay one's own course of bricks on the secure foundation of the courses laid by others who have gone before him." *Id.*, at n.1, citing Benjamin Cardozo, *The Nature of the Judicial Process* 149 (1921) as quoted in *Hubbard v. United States*, 514 U.S. 695, 711 (1995).

[6] Similarly, stare decisis does not compel a district judge to follow the decision of another district judge within the same district. *Starbuck v. City and County of San Francisco*, 556 F.2d 450, 457, n.13 (9th Cir. 1977); *In re Crayton*, 192 B.R. 970, 979-80 (9th Cir. BAP 1996). Also, non-binding on this Court are the decisions of "coordinate" courts, i.e., bankruptcy courts from other districts, which are courts of equal rank. Moore's § 134.02[1][a]; *see, e.g., In re Jones*, 112 B.R. 975, 977 (Bankr.W.D.Mo. 1989).

> [v]ery weighty considerations underlie the principle that courts should not lightly overrule past decisions. Among these are the desirability that the law furnish a clear guide for the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; the importance of furthering fair and expeditious adjudications by eliminating the need to relitigate every relevant proposition in every case; and the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments.

Ball, 185 B.R. at 597 (citing *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 403 (1970)).

In order to promote consistency and predictability, and faith in the rule of law, this Court should depart from its prior decisions, whether rendered by the same or another bankruptcy judge, only upon compelling circumstances. These circumstances might include statutory amendments, changes in or development of relevant case law (particularly by higher courts), or similar factors which undermine the basis for or persuasiveness of the earlier ruling. It is incumbent upon those who seek rulings at odds with this Court's prior decisions to appreciate these reasonable and appropriate constraints on such relief, and to support their request with clear and cogent analysis. Merely arguing that the proponent disagrees with the precedent is insufficient.[7] True, the law is dynamic not static, but prior pronouncements are not, and should not be, lightly discarded.

Thus, this Court concludes that is not absolutely bound to follow *Grewal*. Nevertheless, that decision will be given the respect and deference to which it is entitled, both by virtue of its own persuasiveness and by reason of the sound policies acknowledged above. It is on these bases that the Court will evaluate the Trustee's contentions that *Grewal* was wrongly decided, or that *FitzSimmons* requires a different result.

B. Exemption of Accounts Receivable

1. *Grewal* reasonably construes the statute.

---

[7] At a minimum, the proponent must show that his contentions "are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law." *Cf.* Rule 9011(b)(2).

> The Court in *Grewal* took the position that
> While "accounts receivable" is conspicuously absent from the list [of 11-206(1)], the compensation payable to a self-employed individual, whatever its form or denomination, is encompassed within the scope of the statute provided it represents compensation for personal services.

96.4 I.B.C.R. at 146 (emphasis supplied). This is consistent with the language of § 11-206(1) providing that earnings "means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise." (Emphasis supplied.)

By his decision in *Grewal*, Judge Hagan refused to elevate form over substance, and validated an exemption in the personal earnings of a self-employed individual consistent with the exclusion from garnishment available to other individual debtors. Even though such earnings might be characterized as "accounts receivable," so long as the subject "receivable" was actually derived from the personal services of the debtor, it is exempt to the degree provided in the statute. The matter is, in the final analysis, one of proof of the facts surrounding the creation of the account receivable and to what extent the account receivable does or does not reflect compensation for personal services of the debtor.

This approach gives due consideration to the "plain language" of the statute. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241-42 (1989). It also follows, and furthers, the policy of liberal construction of exemption statutes in favor of the debtor, and does so without torturing the language of the statute. *Collins*, 97.3 I.B.C.R. at 79.

2. *FitzSimmons* does not require a contrary result.

FitzSimmons concerned a chapter 11 debtor in possession who did business as a sole proprietorship. He was not, however, a solo practitioner; he had other lawyers and staff working for him. Though a chapter 11 trustee was appointed, the court allowed the debtor to continue in practice and to pay himself $3,500 "salary" per month, but required him to remit to the trustee all funds received in excess of $15,000 per month. The Bankruptcy Appellate Panel reversed "insofar as [the bankruptcy court order] holds that post-petition earnings from services performed by an individual debtor are property of the estate in a Chapter 11 case." 20 B.R. 237, 240 (9th Cir. BAP 1982). The

trustee then appealed.

The Court of Appeals rejected the debtor's argument that, because he operated as a sole proprietorship, all earnings fell within § 541(a)(6). It also rejected the trustee's argument that §§ 1107 and 1108 override § 541(a)(6) and that a individual chapter 11 debtor can keep only whatever "salary" the court sets. The court held

> that § 541(a)(6) excepts from property of the estate only those earnings generated by services personally performed by the individual debtor. FitzSimmons is thus entitled to monies generated by his law practice only to the extent that they are attributable to personal services that he himself performs. To the extent that the law practice's earnings are attributable not to FitzSimmons' personal services but to the business' invested capital, accounts receivable, good will, employment contracts with the firm's staff, client relationships, fee agreements, or the like, the earnings of the law practice accrue to the estate.

725 F.2d at 1211. The court remanded the matter for further determination of the proper amount of earnings falling within § 541(a)(6), since $3,500 per month could be higher or lower than what FitzSimmons actually generated personally in a given month.

The language used in *FitzSimmons* arguably supports denial of the exemption since the Court of Appeals appears to lump "accounts receivable" among the types of income which don't reflect personal services. *Id.*

Judge Hagan was, of course, aware of *FitzSimmons* at the time he resolved *Grewal*. Indeed, he cited to it, and did so in a way that acknowledged his appreciation for its fundamental holding:

> The plain meaning of personal services is those services personally performed by an individual. *Cf. In Re FitzSimmons*, 725 F.2d 1208, 1211 (9th Cir. 1984)(entitled to monies only to extent attributable to personal services that [the debtor] himself performs, not those attributable to invested capital, accounts receivable, good will, employment contracts with staff, client relationships, fee agreements, and the like). *FitzSimmons* was interpreting the language of 11 U.S.C. § 541(a)(6), however, the analysis of the plain language of that statute is equally applicable

to the definitional language in I.C. § 11-206(1).

96.4 I.B.C.R. at 146. Thus *FitzSimmons* was not ignored. And, upon review and reflection, this Court does not find that it was misapplied or misconstrued.[8] I agree with Judge Hagan that *FitzSimmons* supports the definition of "earnings" as compensation derived from personal services rendered by the debtor, whether in § 541(a)(6) terms or under § 11-206(1). Reading *FitzSimmons* as conclusively foreclosing the possibility that accounts receivable could reflect personal earnings, simply due to the Court's inclusion of the phrase among income attributable to other sources, would be inconsistent with the manifest intent and express reasoning of the balance of the ruling.

3. *Grewal* doesn't stand alone.

Grewal and *FitzSimmons* both focus on the manner by which the amount owed the debtor was generated, rather than the words used to characterize that obligation. This approach is consistent with *In re Baca-Garcia*, 97.4 I.B.C.R. 131 (Bankr.D.Idaho 1997), *In re Pew*, 97.3 I.B.C.R. 76 (Bankr.D.Idaho 1997), and *In re Fernandez*, 97.3 I.B.C.R. 75 (Bankr.D.Idaho 1997), all of which refused to countenance an exemption under § 11-207 for amounts (tax refunds and relocation benefits) not in the nature of compensation for personal services.[9]

Accounts receivable due an attorney were also at issue in *In re Pruss* , 1999 WL 404676 (8th Cir. BAP June 8, 1999). The panel there considered Nebraska's garnishment exemption which, with one exception not relevant here, is essentially identical to Idaho Code §§ 11-206 and 11-207. *Pruss* held, consistent with *Grewal*, that the portion of that lawyer's fees associated with

---

[8] Although *FitzSimmons* discusses the inequity of excluding post-petition income while expenses went unpaid, in the end, the exemption of income to the extent derived from personal services was not conditioned on payment of expenses.

[9] *See also In re Sanders*, 91 I.B.C.R. 205 (Bankr.D.Idaho 1991), which validated a §11-207 exemption of the debtor's earnings in the form of real estate commissions on sales contracts. However, unlike accounts receivable, "commissions" are an identified category of "earnings" in § 11-206(1).

her personal labors fell squarely within the statutory definition of earnings; that the protection of the statute applied with equal vigor to the self-employed as to those in traditional master-servant (employer-employee) relationships; and that neither the characterization of the fees as "accounts receivable," nor the inclusion in the receivable of components other than earnings, nor the non-periodic nature of payments on the receivable, operated to disqualify the exemption as to the portion of fees owed for personal services.

The Court agrees with the *Grewal/Pruss* approach which looks to the underlying nature of the obligation owed to the debtor in order to apply the statute. If the obligation is for the personal services and labor of the debtor, the Idaho legislature has provided for an exemption of 75% of that amount. It does not matter whether it is called compensation, salary, bonus, wage, commission, or "account receivable" so long as the factual predicate is established as a matter of record. To hold otherwise would ignore the plain and reasonable meaning of the statute, would not be in keeping with the liberal construction of exemptions in favor of individual debtors, and would unfairly discriminate between self-employed debtors[10] and those employed by others.

C. Application to "The Dutchman Woodworking"

In the Debtors' Schedule B and C, the Debtors assert that the 75% exemption under § 11-207 results in $750.00 of the $1,000.00 receivable being exempt, and the Trustee is thus entitled only to $250.00.[11] The Debtors have argued that the receivable was generated by the Debtors' own work in a sole proprietorship. The Debtors have filed what their counsel characterizes as

---

[10] Of course, the fact that a debtor may be self-employed is not itself determinative. A sole proprietor may employ other individuals as well as ply his own trade, or receive income for reasons other than his own labors. This was, in point of fact, the situation in *FitzSimmons*. The relevant inquiry is the source of generation of the income, and how that income compares to the other categories of "earnings" established as exempt under § 11-206(1).

[11] Debtors assert in their brief that the Trustee has possession of the receivable in an actual amount of $964.39 and that the Debtors claim 75% ($723.29) as exempt. The schedules have never been amended consistent with this representation. The exact amount does not vary the Court's analysis of the statute, and the Court will expect the Debtors and Trustee to apply the conclusion of this Decision to the actual amount of the receivable collected.

an "affidavit" but which is essentially a March 1999 letter from Mr. DeBoer to his counsel to which is stapled a notary's acknowledgment.[12] It asserts that the Debtors personally built and shipped the woodworking orders which generated the subject receivable. Though the evidentiary record is quite sparse, consisting of the petition, statements and schedules described earlier and this "affidavit," it supports the conclusion that the receivable was generated by personal labor of the Debtors.

CONCLUSION AND ORDER

The Trustee has not carried his burden under Rule 4003(c). Nor has he carried the burden of persuading the Court that departing from *Grewal* is justified or appropriate. Based on the uncontroverted evidence, and under the foregoing analysis, the Debtors are entitled to exempt 75% of the receivable collected. The Trustee's objection to claim of exemption is OVERRULED and the Debtors' exemption of 75% of the account receivable of The Dutchman Woodworking is ALLOWED.

Dated this 20th day of July, 1999.

[12] The Trustee has raised no objection to the Court's consideration of this "affidavit" or disputed its factual representations.